

disability in order to give relief under a then pressing necessity; and to confer a capacity on infants to do acts necessary to enable them to obtain maintenance and education, or to discharge a duty to creditors who had claims upon their property. No material injustice could arise from any legislative interposition to such an extent; because the infant's property was not to be applied to any purpose for which it was not generally or specially bound. To authorize a sale of an infant's imperishable estate for any other purpose, would be not merely to endow him with a capacity to act for his own support, or in discharge of an obvious duty; but, in effect, to divest him of his property, or to force him to make an alienation of it, according to the fanciful opinions and notions of others; in all cases with much risk to the whole, and the certain loss of a part in commissions to the agents employed to make the sale; and in many cases without the least just occasion for such alienation. (*l*)

This application, for the sale of the real estate of these infants, is founded upon the provisions of several public and general acts of Assembly, by which, among other things, it is declared, that where any infants shall be possessed of any real estate, it shall be lawful for the Chancellor, upon the petition of the guardian or *prochein ami* of such infants, after summoning them, and their appearance by guardian, to be appointed by the Chancellor, to issue a commission to not less than three discreet and sensible men, freeholders of the county where such lands may lie, to view and ascertain, by competent and disinterested evidence, the value of such lands, taking into consideration the quality, local situation, improvements, with all the advantages, and also the disadvantages and incumbrances attending the same; and to determine whether it would be to the interest and advantage of the infants, that such land should be sold; (*m*) and report the same to the court with their reasons therefor. *Provided*, that such report shall not be conclusive, but the court may, in its discretion, examine witnesses, and have other testimony, and shall decree a sale only in those cases where, under all circumstances, the court shall be satisfied, that a sale would be for the interest and advantage of the infants. And it is further declared, that in case of the death of the infant,

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(*l*) *Seys v. Price*, 9 Mod. 220; *Hearle v. Greenbank*, 3 Atk. 695; *Ware v. Polhill*, 11 Ves. 278; *Ex parte Philips*, 19 Ves. 122.—(*m*) The Legislature has since authorized the real estate, chattel real, or trust interest of an infant to be sold, leased or mortgaged, 1831, ch. 311, s. 2, 3 and 12; 1835, ch. 380, s. 9.